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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,594	03/04/2005	Adrian Blagg	102792-408(11089P1)	1338

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NORRIS, MCCLAUGHLIN & MARCUS
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NEW YORK, NY 10022

EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/523,594

Applicant(s)

BLAGG ET AL.

Examiner

Charles I. Boyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This action is responsive to applicants' response received November 27, 2006.

Claims 1-19 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9, 11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Morelli, US 6,524,624.

Morelli teaches a two-part disinfecting system consisting of a first part comprising 0.32% sodium chlorite, 1% alpha olefin sulfonate, and 0.02% sodium hydroxide, and a second part comprising 5.2% lactic acid, 0.5% alkyl benzene sulfonate, and 0.5% dye, wherein the two parts are combined to yield a disinfectant composition (col. 12, example 8D). Another example consists of a first part comprising 0.64% sodium chlorite and 0.02% sodium hydroxide, and a second part comprising 2.64% lactic acid, 0.53% ethoxylated alkyl sulfonate, and 0.3% dye, wherein the two parts are combined to yield a disinfectant composition (page 8, example 2, surfactant #4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory. With respect to the viscosity of the final composition, as the reference teaches the same components in the same amounts as the presently claimed composition, the examiner maintains the

composition will inherently have a viscosity within the presently claimed range.

Applicants have traversed this rejection on the grounds that chlorine dioxide will not be generated as it interferes with the colorant present in the example. The examiner respectfully disagrees. Morelli addresses this very issue where the reference states that the alpha olefin sulfonate controls the formation of chlorine dioxide to impart extended color longevity to the composition (col. 3, lines 19-52). At no point does the reference teach that chlorine dioxide will not be formed. The examiner maintains that as the composition of the reference appears to be identical to the composition claimed, that is, a first part containing a chlorine dioxide precursor and a second part containing an acidic liquid, it is insufficient for applicants to merely argue that this composition will not result in the formation of chlorine dioxide. Evidence in support of this argument is required. Similarly, with respect to the viscosity claimed, as the first and second parts of the reference are identical to the first and second parts claimed, the examiner maintains the resulting compositions will be identical and so have a viscosity within the range claimed.

2. Claims 1-3, 5, 11, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrison et al, WO 98/57544.

Harrison et al teach a two-part disinfecting system consisting of a first part comprising 1% sodium chlorite and 0.02% blue dye, and a second part comprising hydrochloric acid, wherein the two parts are combined to yield a colored composition which releases chlorine dioxide (page 4, example). As this reference meets all material

limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the viscosity of the reference will not necessarily be the same as that claimed. First, the examiner notes that independent claim 1 does not claim a specific viscosity range so applicants do not appear to be traversing this rejection with respect to the independent claim.

Furthermore, as the composition of the reference appears to be identical to the composition claimed, that is, a first part containing a chlorine dioxide precursor and a second part containing an acidic liquid, it is insufficient for applicants to merely argue that this composition will not result in the viscosity claimed. Evidence in support of this argument is required.

3. Claims 1-3, 5, 11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Hei et al, US 6,663,902.

Hei et al teach a two-part disinfecting system consisting of an acidic first part and an alkaline second part comprising sodium chlorite wherein the two parts are combined to yield a composition having a pH as low as 4 (col. 30, claims 13, 17, and 18). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the viscosity of the reference will not necessarily be the same as that claimed. First, the examiner notes that independent claim 1 does not claim a specific viscosity range so applicants do not appear to be traversing this rejection with respect to the independent claim.

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Furthermore, as the composition of the reference appears to be identical to the composition claimed, that is, a first part containing a chlorine dioxide precursor and a second part containing an acidic liquid, it is insufficient for applicants to merely argue that this composition will not result in the viscosity claimed. Evidence in support of this argument is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morelli, US 6,524,624.

Morelli is relied upon as set forth above. Recall that Morelli teaches ethoxylated anionic surfactants. As ethoxylated sulfates are among the most common anionic surfactants known, the inclusion of such a surfactant, in light of the reference's teaching of ethoxylated anionics, would be an obvious choice to one of ordinary skill in the art.

Applicants have traversed this rejection on the grounds that the reference teaches away from the present invention as it teaches the reduction and elimination of chlorine dioxide. While the reference does teach that excessive amounts of chlorine dioxide are undesirable, it does not teach the complete elimination of chlorine dioxide, but rather the controlled formation of chlorine dioxide to impart extended color longevity

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to the composition (col. 3, lines 19-52). At no point does the reference teach that chlorine dioxide will not be formed. Accordingly, the rejection is maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571 272 1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles I Boyer
Primary Examiner
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